

The Corporation Journal

FORMERLY

The Corporation Trust Company Journal

APRIL 1915

NO. 47

CONTENTS

The articles appearing in this and subsequent issues will be so arranged under general headings in the body of the Journal as to be of easy reference and to make a table of contents unnecessary. An index will be issued from time to time to facilitate reference to back numbers.

This cover will not appear on subsequent numbers. While each number will be a separate bound unit it will be prepared for insertion in compact form in a binder with no superfluous pages to occupy space.

Issued by

The Corporation Trust Company System

Established 1892

New York

Chicago

Boston

Philadelphia

Pittsburgh

St. Louis

Washington

Jersey City

Portland

Wilmington

The Corporation Journal

This publication is issued by The Corporation Trust Company (in Boston by the Corporation Registration Company and in Wilmington, Delaware, by the Corporation Trust Company of America) as a supplementary service to the lawyers for whom it acts in the organization and representation of corporations.

The Corporation Journal reports matters of interest to corporation lawyers. Brief comment is made on current happenings, recent court decisions, new laws, etc. Lengthy discussion is avoided, the purpose being to make the publication a memorandum for the busy attorney on which he may rely for accuracy and to which he may refer most conveniently. Cross references are made to preceding pages containing comments on the same subject and a cumulative index is issued from time to time.

The Journal should be received on or before the last day of each month. If not received in due time please notify us at once, as only a limited number of extra copies of each issue are printed.

Address communications to our nearest office.

The Corporation Trust Company



NOTICE.

DO YOU WANT

The Corporation Journal?

If you did **not** return the slip enclosed with the March Journal; please notify us at once whether you are interested in the contents of this publication.

Otherwise we will presume you wish your name removed from our mailing list.

We are glad to send the Journal, without charge, to all who are interested.

The Corporation Trust Company

[See over]

Read the Notice on the Other Side.

The Corporation Journal

The Corporation Journal is a continuation of our publication heretofore known as The Corporation Trust Company Journal.

At the request of many of our readers we have changed the form of the Journal so that it may be filed for convenient reference in a loose-leaf binder.

We have arranged for the manufacture of a limited number of special binders for this purpose. The capacity of the binder will be four hundred pages—sufficient to cover the Journals issued for a period of two years. The binders will be ready for delivery about May 15th.

We will make a charge of \$1.50 to cover the cost and expense of delivery. There is no charge for the Journal.

Those who desire binders may use the form below:

1915.

The Corporation Trust Company,
37 Wall Street, New York.

Gentlemen:

Enclosed find check for \$1.50 in payment for one binder for The Corporation Journal.

Name.....

Address.....

Please write name plainly.

It should be the same as appears on the envelopes containing the Journal.



The Corporation Journal

Issued by

The Corporation Trust Company

New York, 37 Wall Street
Chicago, 112 W. Adams Street
Pittsburgh, 1639 Oliver Bldg.
Philadelphia, 1428 Land Title Bldg.

Washington, D. C., 501 Colorado Bldg.
Jersey City, 15 Exchange Place
Portland, Me., 231 St. John Street
St. Louis, New Bank of Commerce Bldg.

Corporation Registration Company

Boston, 511 Exchange Bldg.

Corporation Trust Co. of America

Wilmington, 394 duPont Bldg.

No. 47. Vol. 2.

April 30, 1915

Pages 1-16

DOMESTIC CORPORATIONS

DELAWARE.

SALE OF ENTIRE ASSETS. A stockholder in a Delaware corporation sued to enjoin a proposed sale of substantially all of the assets of the corporation to a Maine company in exchange for the shares of stock of the latter company, and to prevent a distribution by the Delaware company to its stockholders of the shares so received. The charter provided that the directors could sell all of the property of the company by the consent of three-fourths of the stock. There was no allegation of bad faith and no evidence of inadequacy of consideration, but it was alleged that the transaction in legal effect would be either a merger or a consolidation and a legal fraud upon the Statutes of Delaware, and in fraud of the rights of the stockholder if he was compelled to accept an exchange of stock. The Court held that under the Laws of Delaware and the provisions of its charter the company had power to sell substantially all its property or exchange the same for stock in another company and that the transaction did not constitute a consolidation or merger either in fact or in law. The Court distinguished this case from *Riker v. United Drug Co.*, 79 N. J. Eq. 582, 82 Atl. 930, where the New Jersey Court held that exchange of stock of one corporation for stock in another was a consolidation not authorized by the Laws of that state. (See Journal No. 30.) *Butler v. New Keystone Copper Co.*, 93 Atl. 380.

DISTRIBUTION OF ASSETS TO STOCKHOLDERS. The Court held in the above case that the distribution to the stockholders of the shares received would be illegal for two reasons: (1) it would be a diminution of the capital of the company contrary to section 35 of the General Corporation Act; and (2) it would clearly be a winding up of the company, which could be done legally only in the method provided by law.

COLORADO.

PAR VALUE OF SHARES may be fixed in the certificate of incorporation at any amount not exceeding one hundred dollars. Senate Bill 217, Laws of 1915, approved April 10, 1915. Formerly one dollar was the minimum par value allowed by statute.

THE CORPORATION JOURNAL

MAINE.

AMENDMENTS TO THE CORPORATION LAWS. At the session of the Maine Legislature which adjourned on April 3, 1915, several amendments were made to the corporation laws, which are briefly summarized as follows:

CERTIFICATE OF ORGANIZATION. The law heretofore has not expressly authorized the certificate of organization to be verified outside of Maine (R. S. 1903, ch. 47, sec. 8). By this amendment the oath to the certificate of organization may be made outside of the State, before a notary public or a foreign commissioner of deeds for Maine, by any subscriber who was actually present in the State at the meeting for the organization of the corporation. All certificates heretofore verified outside the State are validated (Ch. 298, Laws of 1915, approved April 1, 1915, in effect July 2, 1915, subject to referendum).

RIGHTS OF MINORITY STOCKHOLDERS. Sections 56 and 57 of ch. 47, R. S. 1903, are amended so that no corporation shall sell, lease, consolidate or in any manner part with its franchises "or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business" except with the consent of its stockholders at a meeting, the call for which has given notice of the proposed sale, lease or consolidation. The matter quoted above is that which is added by this amendment. Sections 57 to 67, inclusive, deal with the rights of minority stockholders dissenting from the proposed action. The amendment is important because it extends the operation of these sections to any sale or lease of corporate property except in the ordinary and usual course of business, but it expressly provides that except as to franchises the sections shall not be held to apply to mortgages or corporate property (Ch. 315, Laws of 1915, in effect July 2, 1915, subject to referendum).

SUSPENSION OF CHARTER. Heretofore the charters of corporations have been suspended for default in paying the franchise tax by a special act passed at each session of the legislature. The act passed this year provides for suspension to take place annually upon failure to pay the tax for the preceding year. The Secretary of State is directed to publish in August, 1915, a list of all corporations which failed to pay the tax in 1912, 1913 or 1914, and in the same month of each year thereafter a similar list covering the preceding calendar year. If any corporation so advertised fails to pay the franchise tax then due and the cost of advertising on or before December 1 following, its charter is suspended. During the period of suspension any person who undertakes to do business in behalf of the corporation or who holds the corporation out as doing business or who sells, transfers or puts on the market any of its stock or bonds is subject to a fine of \$300. Suspended charters may be revived by payment of all franchise taxes, including those accruing during the period of suspension and the cost of advertising (Ch. 314, Laws of 1915, in effect July 2, 1915, subject to referendum). The act does not apply to corporations which have been excused from payment of the franchise tax under the provisions of Sec. 31 of Ch. 47, R. S. 1903. Under this section a corporation which has ceased to transact business may be excused from filing the annual return and paying the annual franchise tax until it resumes the exercise of its corporate franchises.

THE CORPORATION JOURNAL

BANK CASHIERS TO RETURN LISTS OF STOCKHOLDERS. Section 25 of Ch. 47, R. S. 1903, is amended by striking out the last sentence thereof, which heretofore required the Secretary of State to lay the reports of bank cashiers before the legislature. The amendment makes no change in the duties of such cashiers and has no application to the ordinary business corporation (Ch. 125, Laws of 1915, in effect July 2, 1915, subject to referendum).

MASSACHUSETTS.

INCREASE OF CAPITAL STOCK—FILING FEES. A corporation voted to reduce its common stock from \$7,000,000 to \$700,000 by reducing the par value of the shares from \$100 to \$10 and at the same time authorized the issue of new common stock amounting to \$4,300,000, both changes taking place at the stockholders' meeting as one transaction. The state attempted to collect a filing fee on the \$4,300,000 of new stock on the theory that it represented an increase, but the Supreme Judicial Court held that the transaction was in fact only a deduction of capital stock and to hold the corporation liable for a fee on an increase would be to give effect to the mere form and not to the substance of what the corporation did. *Commonwealth vs. United States Worsted Company*, 107 N. E. 910.

NEW JERSEY.

AMENDMENTS TO THE GENERAL CORPORATION ACT. At the session of the New Jersey Legislature which adjourned on April 20, 1915, three important amendments were made to the Act concerning corporations, briefly summarized as follows:

RESIDENT DIRECTOR. The requirement that at least one of the directors of each corporation shall be a resident of the state has been abolished by Chapter 197 of the Laws of 1915 which strikes out the last provision of Section 12 of the Act. Originally residence in New Jersey was required of at least one director of each domestic corporation for jurisdictional purposes. It was not until 1896 that the statute provided for a registered agent for service of process, but no special reason arose for eliminating the resident director until the Federal Antitrust Law (the Clayton Act) was enacted October 15, 1914. This law prohibits one person from being director in two or more corporations under specified conditions as to capital, location and similarity of business. As the same person frequently acts as registered agent and fills the purely formal office of resident director for many New Jersey corporations this amendment will do away with the inconvenience which might otherwise arise in complying with the Federal statutes.

POWER TO HOLD STOCK IN OTHER CORPORATIONS. Prior to the amendments of 1913, popularly known as the "Seven Sisters," New Jersey corporations possessed unlimited power to hold and vote stock in other corporations. Chapter 114, Laws of 1915, amending Section 51 of the Corporation Act, restores to corporations the power to purchase stock and bonds for investment purposes, but not to use the same by voting or otherwise to restrain trade or to bring about, or attempt to bring about, the substantial lessening of competition.

REINSTATEMENTS OF CHARTERS. Chapter 69 of the Laws of 1915 is an Act to validate and confirm reinstatements of charters of corporations by the Governor where they had been proclaimed for non-payment of taxes and had paid

THE CORPORATION JOURNAL

to the State the amount agreed upon between the Attorney-General and the Governor, doubt having been cast upon the validity of the legislation under which these reinstatements are made in the case of American Surety Company v. Great White Spirit Company, 58 N. J. Eq., p. 526. Many corporations have been reinstated, have transacted business, and bought and sold real estate, and this act is for the purpose of avoiding any title difficulties in connection therewith.

PROPOSED AMENDMENTS to three other of the "Seven Sisters," Chapters 13, 14 and 19 of the Laws of 1913, sponsored by the New Jersey State Chamber of Commerce, were passed by the Legislature, but were vetoed by the Governor.

NEW YORK

CORPORATE MORTGAGES ARE VOID if made without the written consent of at least two-thirds of the capital stock as required by Section 6 of the Stock Corporation Law. Oral consent or tacit agreement is not sufficient and subsequent action or inaction of the stockholders cannot ratify the mortgage. This is the construction placed upon the language of Section 6 by the Federal Circuit Court of Appeals, Second Circuit, in the absence of any controlling decision of the New York Court of Appeals. In re Post & Davis Co. 219 Federal 171. It should be noted that the statute in question does not apply to purchase money mortgages.

NORTH DAKOTA.

FULL PAID STOCK SUBJECT TO ASSESSMENT UNLESS BY-LAWS OTHERWISE PROVIDE. Stock certificates marked "fully paid" do not protect the holder from assessment by resolution of the directors under Sections 4570-4572 of the Compiled Laws of 1913, unless the by-laws of the corporation make the stock non-assessable. The Sections quoted provide for assessment after the stock has been paid in full. It is customary in that state, where the stockholders wish to avoid such additional assessment, to have incorporated in the by-laws of the corporation a positive provision that the stock shall be non-assessable, and this is thereupon printed upon the face of the certificates. The amount of each such additional assessment is limited to a sum equal to ten per cent. of the authorized capital stock, not ten per cent. of the paid-up stock as was contended in this case. More vs. Courier-News et al., 151 N. W. 2.

FOREIGN CORPORATIONS.

PENNSYLVANIA.

POWER TO HOLD REAL ESTATE. Chapter 36, Laws of 1915, approved April 9, 1915, authorizes foreign corporations "for the refining, manufacturing or sale of petroleum and petroleum products" to hold real estate necessary and proper for the business. Foreign corporations are as a general rule prohibited from holding real estate in Pennsylvania and it is only by special authorizations, of which this act is the latest of a series passed since 1881, that certain classes of foreign corporations may enjoy the privilege of holding real estate to the same extent as domestic corporations.

JURISDICTION OVER INTERNAL AFFAIRS. The courts of Pennsylvania will not take jurisdiction in an action against a foreign corporation to recover divi-

dends on preferred stock where the determination of the question would require investigation of the validity of a plan of reorganization. This question arose in *Hogue vs. American Steel Foundries*, 247 Pa. 13, where the court held that the right to issue stock is one of the attributes of a corporation which is governed by the law of the state from which it derives its existence.

INSTALLATION OF ARTICLES SOLD IN INTERSTATE COMMERCE.

A foreign corporation is not required to register in Pennsylvania where it makes a contract through a local broker for furnishing and setting up fixtures within the state where the facts in the case show that the company's principal office is located and all of its capital stock is invested without the state. It is also to be noted that the contract entered into in this case was executed by the foreign corporation at its office outside of the state, and that all the material used in the fixtures was manufactured outside of the state and consigned by it to itself as consignee to the locality where the work was to be set up. It was held immaterial that the foreign corporation had sent its own workmen into the state to complete the work or that they had employed additional local workmen to complete the contract. *Williams vs. Golden & Crick*, 247 Pa. 397; 93 A. 505. (See Journal No. 46 for other cases on this point.)

UTAH.

CONTRACTS ARE VOID if entered into before obtaining authority and the foreign corporation is denied the right to sue or maintain any action, suit, counterclaim, cross-complaint or proceeding in any state court based on such contract. A foreign corporation cannot hold title, possession or ownership of property, real, personal or mixed within the state before it has complied with the foreign corporation law. House Bill No. 90, Laws 1915, amending Sec. 352, Compiled Laws 1907, approved March 22, 1915.

VERMONT.

NEW FOREIGN CORPORATION LAW. Senate Bill 113, Laws of 1915, approved April 1, 1915, provides that certificates of authority to do business in the state shall be granted for one year only, but such permit may be extended from year to year. All certificates expire on April 1 of each year. Corporations in the state at the time the act was passed may continue to do business under their present certificates of authority until April 1, 1916. The Commissioners of Foreign Corporations must require each corporation to file a sworn copy of its charter, an affidavit as to its location, business, capital stock, assets and indebtedness, and an appointment of the Secretary of State as agent for service of process. The Commission may also require a bond from any foreign corporation for the benefit and security of local creditors or to insure the due filing of returns and payment of taxes. Senate Bill 113, Laws 1915, approved and in effect April 1, 1915.

WISCONSIN.

LOANING MONEY AND TAKING MORTGAGES PERMITTED WITHOUT LICENSE. "Any foreign corporation, including any bank or trust company, may, in its corporate name, and without being licensed to do business in this state, advance and loan money therein, and take, acquire, hold and enforce notes, bonds,

THE CORPORATION JOURNAL

mortgages or trust deeds given to represent or secure money so loaned or advanced or for other lawful consideration, and all such notes, bonds, mortgages or trust deeds which heretofore have been or shall hereafter be taken, acquired or held by any such foreign corporation shall be as valid and enforceable as though it were an individual, and such right of enforcement shall include the right to acquire the mortgaged property upon foreclosure, or in virtue of the provisions of the mortgage or trust deed, and to dispose of the same; provided, however, that any such corporation which shall hereafter transact in this state the business above provided for shall first file with the secretary of state a statement in writing by its president, secretary, treasurer or general manager that it constitutes the secretary of state its attorney for the service of process as provided in paragraph (f) of subsection 3 of this section; and provided, further, that except as regards the advancing and loaning of money and the taking, acquiring, holding and enforcing of securities as above provided, nothing herein contained shall be construed as authorizing any foreign corporation to transact in this state the business of a bank or trust company." (Extract from Senate Bill No. 14 which became a law in effect on April 5, 1915.)

PRICE-FIXING.

FEDERAL COURTS.

SINCE THE DECISIONS OF THE UNITED STATES SUPREME COURT in *Miles Medical Co. vs. Parks*, 220 U. S. 373; *Henry vs. Dick*, 224 U. S. 1, and *Bauer Chemical Co. vs. O'Donnell*, 229 U. S. 1 (referred to in Journals Nos. 25, 30 and 39 respectively) the legality of price-fixing contracts has been before the lower courts in several cases. The recent opinions referred to below are of interest.

FORD CASE. In this case it was held that since the vendor had actually parted with the title to the cars sold to its licensed dealers it could not, by contract with its dealers, dictate the resale price. The court cites the case of *Bauer vs. O'Donnell*, in which it was held that the vendor of a patented article could not by the notice on the package control the price at which the article should be resold after purchase by the vendee. It holds that what cannot be done by notice to the vendee cannot be done by contract with the vendee, as in both cases the sale to the vendee passes the article out of the patent monopoly and beyond the control of the patentee. *Ford Motor Company vs. the Union Motor Sales Company*, Case No. 2147, District Court of U. S., S. D. Ohio, W. D.—not yet reported. The opinion is by District Judge Hollister. This case involved an old form of contract which the Ford Company has discontinued. Its new form of contract was passed upon in a decision given in the District Court of the United States, in Equity, N. D. Illinois E. D., by Judge Landis, Dec. 3, 1914, by which the Barry Sales Co. was enjoined, *inter alia*, from "inducing or attempting to induce any authorized agent of Complainant to arrange for the sale of Ford cars in violation of any of the terms of the contract of such agent with the Complainant." We quote from the company's own statement of the decision, as the case has not yet been reported.

KEYSTONE WATCH CASE. The growth of the Keystone Watch Company and the various consolidations by which it had been formed and enlarged were not criticized by the court, but the attempt of the company later on to coerce its jobbers to sell at a fixed price, by threatening refusal to deal with those who would

not, was held to be a direct and unlawful restraint of trade. The plan of selling the Howard watch, material parts of which were protected by patents, was held lawful so far as fixing by agreement with the jobbers a minimum fixed price at which the jobber should sell, but unlawful in the further attempt by notice on the box containing the watch to control the price at which the retailer should sell to the consumer. This case was decided by Buffington, Hunt and McPherson, Circuit Judges in the District Court of the U. S., E. D. Pennsylvania—not yet reported.

VICTOR TALKING MACHINE CASE. In this case the complainant sued for infringement of its patents. Various patents cover the Victor Talking Machine and sound records. Every machine and sound record has accompanying it a notice that the title remains in the manufacturer for the term of the patent having the longest term to run. The license to use the machine and records is granted on payment of a fixed sum as royalty at the time the license is granted. Upon final expiration of the patents the goods become the property of the licensee if he shall have observed the conditions of the license. The contract also provides for retaking the patented goods upon violation of any of the terms of the license. One of those terms is that the goods shall be relicensed only upon payment of certain fixed prices. Alleged infringement lay in the act of the defendant selling the articles outright for less than the fixed price. The court held that the complainant by receiving the entire royalty had parted with its interest and could not object to a licensee disposing of the article at less than the fixed price. The court said in conclusion: "If this were a case of first impression I might feel that no sufficient reason exists for holding that a patentee could not attach such limitations to the future use of his patented goods as he might choose irrespective of whether he had received a full royalty or not. I think, however, the case of *Bauer vs. O'Donnell* holds to the contrary." *Victor Talking Machine Co. vs. R. H. Macy & Company*, U. S. District Court, Southern District of New York. Opinion by Augustus N. Hand, District Judge. Not yet reported.

KELLOGG CASE. In *U. S. vs. Kellogg Toasted Corn Flake Company et al.* no illegality was alleged in the formation or growth of the Company but the Government centered its attack on the present selling plan of the defendant which it claimed was a combination between the company and its jobbers and retailers. The selling plan is briefly described as follows: The company owns a patent on the cartons or packages in which its "Corn Flakes" are sold. Sales are made directly to jobbers, the company refusing to deal with consumers or retailers. Agreements are exacted from the jobbers to charge the retailers a specified price, and this condition is strictly enforced by the company refusing to continue dealings with any jobber who fails to maintain the fixed prices. An attempt is made to form agreements between the company and the retailer by printing on the carton that the package and its contents are sold on condition that the package and contents shall not be retailed for less than ten cents and that a violation would be considered as an infringement on the company's patent rights. In denying the defendant's motion to strike out a paragraph of the petition relating to its acts prior to the use of the patented carton, and to dismiss the case, the Court held that although the notice on the carton may not constitute a valid contract it may still have the effect of unduly restraining trade and the fact that the carton is patented is immaterial in determining whether the company's plan of maintaining prices was a violation of the Sherman Law. Opinion by Warrington and Knappen, Circuit Judges, and

THE CORPORATION JOURNAL

Tuttle, District Judge, in the District Court of the U. S., E. D. Michigan, S. D., April 14, 1915. Not yet reported.

WASHINGTON.

MANUFACTURERS MAY FIX RETAIL PRICES in the State of Washington where the result is not to create a monopoly or to result in the substantial control of the supply or price of a given commodity within a given area by a single dealer or a few dealers or by what amounts to a combination of all of the dealers. In this case a manufacturer in the State of Washington sold flour in various markets in severe competition with many other brands. The quantity it sold was only a very small part of the flour sold in each market. It made an agreement with a retail dealer in the same state by which it sold flour to him at a uniform wholesale price on the condition that he should resell it at a fixed minimum retail selling price. After the retailer had violated this agreement by selling at less than the fixed price and threatened to continue the practice the manufacturer sought to restrain him by injunction. The lower court dismissed the case on demurrer. The Supreme Court of Washington granted the injunction on appeal. In its opinion the Court holds that if a contract has a tendency to control a given market or creates or tends to create a monopoly or such approximation to monopoly as to practically bar others from entering the field by the chance of failure, it is void, as essentially injurious to the public. Again, if the contract fixing the price is not ancillary to some main lawful contract, the sole object of the contract is to restrain competition and enhance prices, and its only tendency is to control the market. It is therefore, invalid, because of this tendency without reference to its reasonableness in other particulars. But it does not follow that every contract restraining competition as to an insignificant part of the total of a given commodity in a given market, in any degree is obnoxious to public policy. "Contracts fixing prices as incidental to some main contract, and involving less than a controlling part of a given commodity in a given market, not proceeding from nor tending to create or to maintain a monopoly, will be sustained when the restriction is under the circumstances of the particular case, reasonable in reference to the interests of the parties, and reasonable in reference to the interests of the public; that is to say, when the price fixed is fairly necessary to the protection of the covenantee, and fair to the public in that it furnishes only a reasonable profit to the contracting parties." *Fisher Flouring Mills Co. vs. C. A. Swanson*, 137 Pac. 144, 76 Washington 649, 51 L. R. A. New Series 522. Although this opinion is not recent, having been handed down in December, 1913, we refer to it now because of the general interest in this subject at the present time. It contains a very interesting discussion of the question of price fixing and concludes with this strong argument in favor of the practice: "Finally, it seems to us an economic fallacy to assume that the competition, which in the absence of monopoly benefits the public, is competition between rival retailers. The true competition is between rival articles, a competition in excellence, which can never be maintained if, through the perfidy of the retailer who cuts prices for his own ulterior purposes, the manufacturer is forced to compete in prices with goods of his own production, while the retailer recoups his losses on the cut price by the sale of other articles, at, or above, their reasonable price. It is a fallacy to assume that the price cutter pockets the loss. The public makes it up on other purchases. The manufacturer alone is injured, except as the public is also injured through the

manufacturer's inability, in the face of cut prices, to maintain the excellence of his product. Fixing the price on all brands of high-grade flour is a very different thing from fixing the price on one brand of high-grade flour. The one means the destruction of all competition and of all incentive to increased excellence. The other means heightened competition and intensified incentive to increased excellence. It will not do to say that the manufacturer has not interests to protect by contract in the goods after he has sold them. They are personally identified and morally guaranteed by his mark and his advertisement."

TAXATION.

KENTUCKY.

SITUS OF PERSONAL PROPERTY—ACCOUNTS RECEIVABLE. A Kentucky corporation, having branches in other states at which receipts from local sales are deposited and records of accounts receivable are kept, is not required to pay a tax on its accounts receivable in Kentucky. The rule that tangible personal property actually present in another state, so as to acquire there a situs for taxation, is immune from taxation in the domicile of the owner, has been extended to accounts receivable. *Commonwealth v. B. F. Avery & Sons*, 174 S. W. 518.

NEW YORK.

A **STATE TAX DEPARTMENT** has been created by Ch. 317, Laws 1915, approved April 15, 1915, amending Article 8, Ch. 60 of the Consolidated Laws. The State Board of Tax Commissioners is abolished. The head of the new department shall be a state tax commission of three members appointed by the Governor. The department has general supervision of the general system of taxation and its duty is to secure more uniform valuation of property in the state. It shall confer with local assessors and also with tax officials of other states. A biennial conference of local assessors is provided for. The commission may move for a reassessment in any district and may review the equalization fixed by the local boards of supervisors. The assessment of corporation taxes is transferred from state comptroller to the new tax department. No other change is made by this amendment in the tax laws relating to corporations.

PENNSYLVANIA.

BONUS ON CAPITAL STOCK will not be assessed against a foreign corporation for that part of its capital which is represented by money received from sales made and deposited in Pennsylvania banks subject to check, or money due from sales but uncollected. *Commonwealth vs. Imperial Window Glass Co., C. P. Dauphin County*, No. 27, Com. Docket, 1912.

CAPITAL STOCK TAX. When a domestic manufacturing corporation invests in stock of a foreign corporation that part of its capital stock so invested is not exempt from taxation on the ground that it represents property not in the state. But if it owns all of the stock of a subsidiary foreign corporation the property of which is permanently located outside the state and thereby is in fact the real owner thereof the court will look through the form to the substance and hold that the capital so invested is not taxable in the state. But it cannot claim exemption as a manu-

THE CORPORATION JOURNAL

facturing corporation on stock purchased in foreign corporations to secure contracts which will aid and enhance its manufacturing business in Pennsylvania. *Commonwealth v. The Westinghouse Air-Brake Co. No. 561, Commonwealth Docket, 1909, Common Pleas, Dauphin County*—not yet reported.

A corporation engaged in manufacturing is exempt in the State of Pennsylvania for that part of its capital which is exclusively employed in manufacturing enterprises. It was held, however, in the case of *Commonwealth vs. Williamsport Rail Co., C. P. Dauphin County, No. 24, Com. Docket, 1913*, that a manufacturing company which purchased raw materials which they forwarded to another manufacturing company to manufacture into steel rails and which were afterward sold by the first company was not exempt from taxation as a manufacturing company because its capital was not employed in manufacturing.

It was also held in *Commonwealth vs. John T. Dyer Co., 18 Dauphin County Reporter 133*, that crushing rock and stone and screening the crushed rock into various sizes is not a manufacturing business because the process of crushing and sorting did not require the application of any art or skill which would bring it within the category of manufacturing.

And a corporation organized for the purpose of conducting a cold storage and warehouse business was held not to be engaged in manufacturing by reason of the fact that it produced ice for refrigerating its storage space because the ice thus produced was not produced by the company as the business for which it was organized, but was merely an incidental result of operation. *Commonwealth vs. Industrial Cold Storage & Warehouse Company, 18 Dauphin County Reporter 134*.

INCOME TAX.

Rulings were issued in April on coupon interest accruing prior to the incidence of the tax (p. 456); on partnership returns (p. 457); on losses incurred by retirement of bonds (p. 457); on returns of fiduciaries for non-resident aliens (p. 461); and on appreciation of capital assets (p. 462).

A joint resolution has been passed by Congress providing for refund of the amount paid as a compromise for penalties for failure to file returns (p. 455) and a decision of the Circuit Court of Appeals relating to deduction of discount on sale of bonds and treatment of increase in value of assets has been published (p. 463).

(NOTE: The page references above are to our Income Tax Service, in which the rulings, etc., are printed in full.)

WAR TAX.

During April the Internal Revenue Bureau, under the Emergency Revenue Act of October 22, 1914, issued rulings on the taxability of bonds accompanying mortgages when such bonds are executed by corporations (pp. 253, 262-266); on consignments of newspapers (p. 254); on mail entries in the customs (p. 255); on treasury notes issued by foreign governments (p. 256); on accommodation loan and return of certificates of stock (p. 257); on special tax applying to circuses, carnivals, etc. (p. 258); and on a transfer of stock from a trustee to a substitute trustee (p. 261).

(NOTE: The page references above are to our War Tax Service, in which these rulings are printed in full. Some of the rulings are formal treasury decisions. Others are contained in letters in answer to specific questions.)

CANADIAN WAR TAX.

The Dominion of Canada has enacted a War Revenue Act (Bill 76, Fifth Session, Twelfth Parliament, 5 Geo. V. 1915, approved April 8th, in effect April 15th). This Act levies a tax of 2c. on checks, and on bills of exchange, drafts or promissory notes when transferred to a bank for collection or so as to constitute the bank the holder thereof. Every bank having a promissory note, check or other bill of exchange made or drawn out of Canada, but payable in Canada, is required to affix a stamp of 2c. thereto which amount, however, may be collected from the person entitled to the proceeds of the note, check or bill. Withdrawals from savings banks are also taxed. The stamp tax is 2c. irrespective of the amount for which the check, money order, bill of exchange, draft, promissory note or withdrawal receipt is drawn. The Act also taxes money orders and postal notes. The former at 2c. and the latter at 1c., irrespective of the amount of the money order or postal note. As a rule postal notes in Canada are not drawn for more than \$5.00, although the postal regulations provide for postal notes running in denomination from 20c. up to \$10.00. Postal money orders run up to \$100.00. Every letter and postcard is required to carry an additional 1c. postage stamp. This tax does not apply to matter which passes through the mails at less than the letter rate, nor does the tax apply to letters and postcards entitled to free transmission or where the tax would be contrary to provisions of the Universal Postal Convention. Every cable company and telegraph company is required to collect 1c. upon each message. Railway and steamship tickets between places in Canada to a place in Newfoundland, the West Indies, Bermuda, British Guiana, British Honduras or the United States are subject to a graduated tax—5c. when the value of the ticket is over \$1.00 and not more than \$5.00 and if the value of the ticket is over \$5.00 an additional 5c. for each \$5.00 or fraction thereof. For each sleeping car berth a tax of 10c. and for each parlor car seat 5c. Mileage books are taxable on the whole amount paid at the time of purchase. There is no tax on bills of lading. Steamship tickets to foreign countries, other than those enumerated above, are subject to a tax of \$1.00 if the price of the ticket exceeds \$10 but does not exceed \$40; \$3.00 if the price exceeds \$40 but does not exceed \$65, and \$5.00 if the price exceeds \$65. Proprietary or patent medicines, perfumery and wine or champagne are to be stamped according to the size of the container. Postage stamps may be used for the prepayment of the tax on checks, drafts, notes, express money orders, etc. and on proprietary or patent medicines, perfumery, wines or champagne. Banks, trust and loan companies and insurance companies are subject to special taxes computed on business or income from January 1, 1915. In the case of banks, the tax is $\frac{1}{4}$ of 1% on the average amount of notes of the bank in circulation; trust and loan companies, 1% of the income from Canadian loans, investments and business; insurance companies, 1% of the net premiums received in Canada. Premiums on life and marine insurance are exempt, and so are fraternal benefit societies and purely mutual companies.

STATE LEGISLATURES.

ADJOURNMENTS. At the time of going to press the Legislatures of the following states have adjourned the 1915 Regular Sessions: Arizona, Arkansas, Colorado, Delaware, Idaho, Indiana, Iowa, Kansas, Maine, Minnesota, Missouri,

THE CORPORATION JOURNAL

Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, West Virginia (including Special Session) and Wyoming. The Special Session in Virginia has also been adjourned. Arizona, Louisiana and Texas will meet in Special Session later on in the year. Many important laws have been passed by the Legislatures in the Sessions just adjourned. Our Legislative Department is prepared to furnish advance copies of any Act passed in 1915 by any State Legislature or by Congress, making a charge therefor of fifteen cents per folio. If all the new laws on any particular subject are desired an estimate of the total cost will be given upon information as to the subject and the States to be covered.

BLUE SKY LAWS.

Laws regulating the sale of investment securities have been passed in many states in recent years. The courts have declared several to be unconstitutional. During the present year there has been a tendency to remodel existing laws. Our records show that the following states have taken the action indicated: Arkansas, Chapter 214, Laws of 1913, repealed and a new law enacted; Iowa, Chapter 137, Laws of 1913, repealed and a new law enacted; Kansas, Chapter 133, Laws of 1911, and Chapter 141, Laws of 1913, repealed and a new law enacted; Michigan, Act 143, Public Acts of 1913, repealed and a new law enacted; North Dakota, Chapter 32, Civil Code, Compiled Laws of 1913, repealed and a new law enacted; Oregon, Chapter 341, Laws of 1913, amended; South Carolina, Chapter 491, Statutes at Large of 1912, repealed and a new law enacted; West Virginia, Chapter 15, Laws of 1913, repealed and a new law enacted. Copies of any of these laws may be obtained from our Legislative Department. The charge is fifteen cents per folio.

RECENT PUBLICATIONS BY THIS COMPANY.

We have published in pamphlet form, for free distribution to our clients, the amendments to the Corporation Laws of Delaware and the Corporation Act of New Jersey. Copies may be obtained upon request to any of our offices.

WHAT THE CORPORATION TRUST COMPANY DOES FOR THE LAWYER. Many attorneys know of the several ways in which we can serve them. They call on us to act in many capacities; to take full responsibility for handling important details, to save them time and thought and leave them free to give attention to other branches of their practice. Other attorneys do not know of all our varied activities. We believe it will be to our mutual advantage to get better acquainted. For this reason we are issuing a series of bulletins each calling attention to some particular way in which we can serve attorneys. Perhaps we can serve you in some of the ways we enumerate. We bespeak your careful attention to the bulletins you receive. We would not incur the expense of publishing them if we did not think they would be of value to the recipients.

THE CORPORATION JOURNAL should be kept in a binder for convenient reference. We furnish a substantial binder for \$1.50.

Our Bureau of Information

Our Bureau of Information is maintained, for the benefit and assistance of attorneys, to answer questions relating to the statutory requirements imposed upon foreign and domestic corporations by the various states and the provinces of Canada.

No charge is made for answering questions as to the statutory requirements imposed upon foreign corporations as a prerequisite to "doing business" in any jurisdiction, the cost of obtaining licenses to do business, the rates of entrance fees or annual license fees or franchise taxes, statutory penalties or disabilities for "doing business" without license, etc.

Similarly, information is furnished as to the cost of incorporation, statutory requirements as to number and qualifications of incorporators and directors, as to corporate names, franchise taxes, etc.

Our collection of data on these subjects is at the service of all Members of the Bar. We believe its use by our friends will save them time and effort. If it results in closer business relations, we shall be pleased, but the service is not offered with a view to placing any obligation whatever upon attorneys whom we may have the pleasure of serving.

Address communications to our nearest office

THE CORPORATION TRUST COMPANY

SERVICE

The newest meaning attached to the word "Service" is not to be found in dictionaries.

It refers to the Service rendered by this Company. It means "the best thing of its kind."

We do not make this assertion. We are repeating what many of our clients have said.

CORPORATION SERVICE.....	(Assists Attorneys in the organization of corporations and licensing of foreign corporations in all states and provinces.
LEGISLATIVE SERVICE.....	(Reports on new laws and pending legislation in every State Legislature and Congress.
REPORT AND TAX SERVICE.....	(Gives timely notice of reports to be filed and taxes to be paid by corporations in all states and provinces.
INCOME TAX SERVICE.....	(Reports Rulings and Regulations under the Income Tax Law.
WAR TAX SERVICE.....	(Reports Rulings and Regulations under the Emergency Revenue Law.
RESERVE ACT SERVICE.....	(Reports Rulings and Regulations of the Federal Reserve Board.
TRADE COMMISSION SERVICE..	(Reports Rulings and Decisions of the Federal Trade Commission.
SUPREME COURT SERVICE.....	(Reports Decisions of the U. S. Supreme Court.

You may be receiving one or more of these services. You will find the others answer your need equally well.

Information regarding any service may be obtained from our nearest office.

THE COMPANY FOR LAWYERS
The Corporation Trust Company
ESTABLISHED 1892

System

37 Wall Street, New York
511 Exchange Building, Boston
(Corporation Registration Company)
281 St. John Street, Portland, Me.
394 DuPont Building, Wilmington, Del.
(Corporation Trust Company of America)
1639 Oliver Building, Pittsburgh

112 West Adams Street, Chicago
15 Exchange Place, Jersey City
1428 Land Title Building, Philadelphia
1024 New Bank of Commerce Building,
St. Louis.
501 Colorado Building, Washington, D. C.
304 Market Street, Camden, N. J.

